

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 3006 OF 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NITIN JAGDISHBHAI PATEL

VERSUS

VASTRAL NAGAR PANCHAYAT

Appearance:

MR RR VAKIL for the Petitioner

MR JAYANT PATEL for the Respondent No.1

MR HH PATEL, AGP for Respondent No.3

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 10/09/1999

C A V JUDGMENT

#. The facts of the case in brief are that the

petitioner was appointed as Clerk vide resolution No.21 dated 29/6/95 of the Respondent No.1 and in pursuance thereof he joined that post on 1/7/1995. Later on on 5/7/95 the Gram Panchayat was reconstituted as Vastral Municipal Borrough. In connection with a case of corruption under the order dated 26/11/96 of the respondent Nos.2 the petitioner was placed under suspension. Anti Corruption Bureau asked sanction for prosecution of the petitioner which was declined. However, the District Collector, Ahmedabad intervened in the matter and in pursuance of his letter the respondent No.1 granted sanction for prosecution of the petitioner on 21/2/97. The petitioner, in this Special Civil Application, is praying for quashing and setting aside of the order dated 26/11/96 of the respondent No.1 placing him under suspension. Second prayer is made for quashing and setting aside of the order dated 21/2/97 of the respondent Nos. 1 & 2 granting there under sanction for his prosecution. A prayer has also been made for direction to the respondents to pay subsistence allowance to him from 26/11/96. The prayer for interim relief is made for stay of both the aforesaid orders.

#. The petition was placed in the court for preliminary hearing on 17/4/98. On that date a statement has been made by the learned counsel for the petitioner that the petitioner does not challenge the order of the respondent No.2 under which he was placed under suspension and further confines this petition only to the nonpayment of subsistence allowance to him by the respondent. From this statement of the learned counsel for the petitioner, it is clear that the petitioner has given up the challenge to both the impugned orders of the respondents, first under which he was placed under suspension and second under which the sanction has been granted for his prosecution. So, the dispute now remains of the claim of the petition for subsistence allowance during the suspension period.

#. The learned counsel for the petitioner contended that the respondent No.1 placed the petitioner under suspension and it is its legal obligation to pay to the petitioner subsistence allowance. It has next been contended that by placing the petitioner under suspension on the ground a criminal case is pending for investigation against him, the relation of employer and employee does not come to an end and the petitioner has been suspended from the services so he may not get full salary but subsistence allowance is to be given to him. Lastly it is contended that the action of the respondent No.1 to withhold the payment of the subsistence allowance

to the petitioner is contrary to Articles 14 & 21 of the Constitution of India.

#. The learned counsel for the respondents strongly opposed this Special Civil Application. It is contended that the petitioner was appointed purely on temporary and ad-hoc basis and though it is true that an order has been passed to place the petitioner under suspension but it is in fact and substance an order under which his service automatically stands terminated. Carrying this contention further the learned counsel for the respondents submits that the status of the petitioner was only of a temporary employee and the sanctioned post was not available on which he could have been made permanent. Further it is contended that the very entry of the petitioner in the services is contrary to the provisions of Articles 14 & 16 of the Constitution and the nature of the appointment which has been given to him coupled with the fact he has involved in corruption, he is not entitled for subsistence allowance. Lastly, it is contended that this writ petition deserves to be dismissed only on the ground of concealment of the material and important facts by the petitioner from this court.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is not in dispute that the petitioner was appointed purely on ad-hoc basis on consolidated salary. It is also not in dispute that this fact has not been disclosed by the petitioner in the Special Civil Application. The petitioner does not dispute and in fact is admitted case that he involved in a serious offence i.e. corruption and for his prosecution a sanction has also been accorded. Technically speaking an order is there under which the respondent No.1 placed the petitioner under suspension. It is really shocking and surprising that in such matters the respondent No.1 has passed an order of the suspension of the employee, who was given the appointment purely on ad-hoc and urgent basis and that too on the consolidated salary. Being an ad-hoc appointee on consolidated salary in fact the petitioner has no right to continue on the post. This appointment of the petitioner is terminable at any point of time even without giving a notice. On the basis of these undisputed facts inference can be drawn that the very entry of the petitioner in the service of the respondent No.1 is as a result of favouritism and nepotism. It is a clear case of favouritism, which was extended to the petitioner by some persons sitting in the

office of the respondent No.1. This appointment of the petitioner has not been made by any selection. Though it may be a temporary appointment, the provisions of Articles 14 & 16 are applicable to such appointment. The facts of the case go to show that it is an entry, which is permitted to the petitioner by his own person or to be more specific by a person to his favorite through back door. That is not the only stage where this favouritism has been extended to the petitioner but at this stage by placing the petitioner under suspension he has been again favoured. It is really a matter of serious concern that an employee who has been given purely temporary and ad-hoc appointment and that too only on consolidated salary within few months of his appointment indulged in such serious activities of corruption. This order placing the petitioner under suspension, I have no hesitation to say is as a result of somebody's favours to the petitioner. If we go by the technicalities then what the petitioner contends may be correct but if we go by the substance, the nature of the appointment of the petitioner, how the appointment of the petitioner has been made and over and above that the same is made in violation of Articles of 14 and 16 of the Constitution of India, this is not the case where the court is under any legal obligation to grant the relief to the petitioner in its extraordinary equitable jurisdiction. This extraordinary equitable jurisdiction is not meant for to be exercised in favour of the persons, who even has not waited for his regular/permanent appointment and indulged in the corrupt practices. This daring of the petitioner to involve within few months of his appointment in the corrupt practices further fortifies and support to my view that somebody is there behind him sitting in the office of the respondent No.1. Otherwise employee who has been appointed on ad-hoc basis and consolidated salaried would not have dared to enter and do all such activities. The reference to the provisions of Articles 14, 16 & 21 of the Constitution by the counsel for the petitioner is not of any help to the petitioner in this case. An employee, who claims protection of his own fundamental rights before this court should have been exhibited himself to be a bonafide and law abiding citizen and above that an employee, whose appointment is made strictly in accordance with the provisions of Articles 14 & 16 of the Constitution of India or if any recruitment rules are framed than in consonance with those rules. A person, who manipulates his entry in the service as a result of favouritism and nepotism is certainly a person of the category who got service from the back door and to such person this court cannot grant any protection under its extraordinary equitable

jurisdiction. In case this court grants protection to such person on technical grounds in total ignorance of the fact and without looking to the fact how the petitioner has got birth in the service, what is the nature of his appointment and what are his deeds in the services within a short period of his entry then it will be a fraud on the Constitution and this court will not do it. It is not gainsay that this court while sitting under Article 226 of the Constitution will not perpetuate an illegality.

#. Taking into consideration the totality of the facts of this case, I have no hesitation to hold that the ad-hoc appointee who has been given appointment only on consolidated salary if he involves in such a serious offence his services stands terminated automatically on the day on which the authority, thought of placing him under suspension. It is the case where the petitioner's services would have been brought to an end by the respondent No.1. Merely because somebody in the office of the respondent No.1 favoured him this court will not protect him. The services of the petitioner shall be deemed to have been terminated for all the purposes from the date of the passing of the order placing him under suspension i.e. 20/11/96. In the case of the employees of this class as stated earlier for termination of their services, no notice whatsoever is required to be given by the respondents. In this respect fruitfully reference may have to the decision of the apex court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain & Ors. reported in JT 1995 (1) SC 198 and a decision of this court in the case of Bhanmati Tapubhai Muliya Vs. State of Gujarat reported in 1995(2) GLH 228. As it is a case of the automatically termination of the services of the petitioner, for his prosecution sanction was not necessary. In view of this aspect of the matter no interference otherwise is called for in the order dated 21.2.97 of the respondent No.1.

#. In the result, the Special Civil Application fails and the same is dismissed. It is hereby declared that the petitioner has no right to hold the post and the day on which he was placed under suspension is to be taken to be the date of termination of his service and as a result thereof he is not entitled for any subsistence allowance.

In the result, the Special Civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

(S.K.Keshote, J.)

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